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No.

In The
Supreme Court of the United States

OCTOBER TERM, 1981

FANNIE GODWIN,

Appellant,

v.

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Appellees.

On Appeal from the Supreme Court of Louisiana

JURISDICTIONAL STATEMENT

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No.

In The
Supreme Court of the United States

OCTOBER TERM, 1981

FANNIE GODWIN,

Appellant,

v.

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Appellees.

On Appeal from the Supreme Court of Louisiana

JURISDICTIONAL STATEMENT

THE QUESTIONS PRESENTED

(1) Whether the Louisiana Supreme Court erred in holding that the School Board can prevent plaintiff from bringing any hand-carried sign into its public meetings, enforcable by expulsion and arrest for criminal trespass, without causing an impermissible deprivation of her Constitutional rights of speech, petition and assembly.

(2) Whether the Louisiana Supreme Court applied the proper standard of review in its consideration of the degree to which the defendant school board's order and decorum at its public meetings was threatened

by hand-carried signs and the need for this regulation proscribing the exercise of constitutional rights of speech, petition and assembly.

(3) Whether the Louisiana Supreme Court exercised the proper judicial function in reviewing the defendant school board's stated justification for its ban on all hand-carried signs in its public meetings.

(4) Whether the Louisiana Supreme Court erred in holding that this restriction on the free exercise of speech, petition and assembly leaves open ample alternative channels for communication.

(5) Whether the Louisiana Supreme Court erred in holding that defendant school board's regulation prohibiting all hand-carried signs from its public meetings was not Constitutionally infirm either for its facial overbreadth or for its overbreadth as applied to the facts.

(6) Whether the Louisiana Supreme Court erred in refusing to grant plaintiff's prayer for injunctive relief prohibiting the defendants from enforcing the prohibition against hand-carried signs in public meetings of the school board in derogation of her Constitutional rights.

ALL PARTIES TO THE PROCEEDING

The parties in this proceeding are Fannie Godwin, appellant, and the East Baton Rouge Parish School Board and George Richard, as its president, appellees.

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The opinion of the Louisiana Supreme Court reported at 408 So. 2d 1214 (La. 1981), appears as Appendix "A" to this jurisdictional statement.

The opinion of the Court of Appeal for the First Circuit of Louisiana, reported at 403 So. 2d 72 (La App. 1st Cir. 1981), appears as Appendix "B" to this jurisdictional statement.

The oral reasons for judgment of the Nineteenth Judicial District Court of Louisiana, Judge William H. Brown presiding, unreported, appears as Appendix "C" to this jurisdictional statement.

JURISDICTION

This case comes before this Court on an appeal from a final judgment of the Louisiana Supreme Court issued on December 14, 1981. A timely petition for a rehearing was denied by that Court on February 19, 1982. A notice of appeal to this Court was filed in the Louisiana Supreme Court on May 10, 1982. This jurisdictional statement was filed within ninety (90) days of the denial of the petition for a rehearing by the Louisiana Supreme Court.

This Court's jurisdiction is founded on 28 U.S.C. 1257 (2). Rule VII of the school board's rules of procedure is a state statute in that it, with all of these rules, was enacted by the duly elected school board authorized by Article 8, Section 9(A) of the Louisiana Constitution and empowered to so act by LSA R.S. 17:81. The rule complained of is a regulation of a legislative character

enacted by a school board acting under authority flowing directly from the Louisiana Constitution and legislature. *McCarthy v Philadelphia Civil Service Commission*, 424 U.S. 645 (1976). *Hamilton v Regents of University of California*, 293 U.S. 245 (1934).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Constitution of the United States, Amendment 14, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Louisiana of 1974, Article 8, Section 9(A)

The legislature shall create parish school boards and provide for the election of their members.

STATUTORY PROVISIONS INVOLVED

Louisiana Revised Statutes, 17:81, See text in Appendix "G"

REGULATORY PROVISIONS INVOLVED

Rule VII of the Rules of Procedure of the East Baton Rouge Parish School Board—See text in Appendix "H"

Rule VI of the Rules of Procedure of the East Baton Rouge Parish School Board—See text in Appendix "I"

STATEMENT OF THE CASE

The posture of this proceeding as it reaches this Court was correctly set forth by the Louisiana Supreme Court in its opinion as follows:

"Fannie Godwin instituted this action against the East Baton Rouge Parish School Board and its president, George H. Richard, seeking a declaration that Rule VII of the Rules of Procedure of said board, both on its face and as applied to her, violated her rights of freedom of speech, to assemble peaceably and to petition government for a redress of grievances under the first amendment to the federal constitution and section 7 and 9 of article 1 of our state constitution. She further sought an injunction prohibiting the enforcement of said rule.

"After a hearing, the trial court upheld the constitutionality of Rule VII and denied the application for a preliminary injunction. Plaintiff appealed. The court of appeal affirmed. On plaintiff's application, we granted certiorari to review the correctness of that decision." The Louisiana Supreme Court upheld Rule VII as constitutional and affirmed the decisions of the lower courts.

The basic facts surrounding this litigation were stipulated to by all parties and correctly stated in the Louisiana Supreme Court opinion as follows:

"On December 4, 1980, the East Baton Rouge Parish School Board adopted new 'Rules of Procedure' which became effective January 5, 1981. On January 5, 1981, the school board met at the Instructional Resource Center of the school board, a publicly-owned building. The principal purpose of the meeting was to discuss, deliberate and take official action toward adopting a proposed plan for desegregating the public schools in the parish. Mrs. Godwin attended the meeting as a member of the public and sat at the rear of the meeting room with no one seated behind her. She carried a sign approximately 15 x 23 inches in size which she displayed by standing next to her chair and holding it above her head. The sign depicted a black and white child and stated: 'Desegregation can help people know one another better so they can work together better.' At no time did Mrs. Godwin engage in any loud or boisterous conduct nor did her behavior threaten the orderly conduct of the meeting. She conducted herself in a quiet and orderly manner at all times. The school board president, George Richard, interrupted the agenda and requested Mrs. Godwin to remove the sign or herself from the meeting. He read her the rule prohibiting signs of which she was already aware. When she failed to comply, he recessed the meeting, left the bench or podium and approached Mrs. Godwin in the rear of the room where he again asked her to remove the sign or herself. Upon her refusal to do so, she was arrested for trespass and removed from the building by the police."

The operative part of Rule VII that led to the expulsion and arrest of plaintiff reads as follows:

> No sign, placard, or poster which is carried by hand shall be permitted in the School Board office building or any of its rooms.

At the hearing on plaintiff's application for preliminary injunction, three witnesses testified. The defendant, George Richard, president of the School Board, and Eileen Armstrong, a board member for ten (10) years and the immediate past president, testified on behalf of the defendants. Plaintiff, Mrs. Godwin, was the third witness. Both Richard and Armstrong were of the opinion that Rule VII was necessary. They gave as its principal justification that hand-carried signs disturbed the order and decorum of the public meetings of the school board. They also testified that they found such signs "distracting", "disturbing", obstructive of the view of others in attendance, and potential hazards to the physical well being to the public. In support of these opinions, these witnesses could not recall any occasion where such signs, which had never previously been excluded, had injured anyone or had caused a meeting to be dismissed. The essence of their complaint that such signs were "distracting" and "disturbing" was that, in the past, these signs diverted their concentration from the issue at hand by their reading of them. One last reason given to justify Rule VII by Armstrong was to improve the "image" of the school board and to reduce the "circus atmosphere" that some felt surrounded the meetings.

Aside from the bare assertions of these two board

members, there is precious little evidence to support the justification of Rule VII. Mrs. Armstrong could only recount one occasion in her ten years on the school board in which she felt that signs were truly a threat to the conduct of the meeting. That occasion related to a meeting in which employees of the Board were disgruntled about their employment conditions and were attempting to organize under the Teamsters Union. She admitted that she, as Board president, had allowed too many people (approximately 200) in the meeting room in violation of the East Baton Rouge Parish Fire Code. (Hearing Transcript at 39). She also said of this meeting that it was atypical.

It is submitted that the excessive number of people and the nature of that meeting, not the signs present, caused the perceived threat. Moreover, it was stated that this was the most signs ever in a meeting attended by the witnesses.

Plaintiff's uncontraverted testimony is that, based on her regular attendance at school board meetings for nine years, the typical meeting had approximately twenty persons in attendance. She further testified that she had never attended a board meeting whose order was disturbed by signs.

SUBSTANTIALITY OF THE QUESTIONS PRESENTED

FIRST AMENDMENT RIGHTS ARE ACCORDED PREFERENTIAL TREATMENT

The rights of free speech, assembly and petition which are affected by the ban on signs complained of

herein are at the very core of our democratic process. They have been called, "the indispensible condition of nearly every other form of freedom." *Palko v Connecticut*, 302 U.S. 319, 327 (1937). This Court has treated the rights afforded by the First Amendment with special judicial solicitude, as preferred rights. *Saia v People of the State of New York*, 334 U.S. 558 (1948). Thus, whenever government has attempted to restrain the free exercise of these rights, this Court has placed a heavy burden on the justification of such restraints. *Speiser v Randall*, 357 U.S. 513 (1958).

PRIOR RESTRAINT REGULATIONS

Whenever a restraint is placed upon free expression prior to its exercise, such a regulation is treated as coming before this Court with a heavy presumption against its constitutional validity. *Nebraska Press Association v Stuart*, 427 U.S. 539 (1976). Plaintiff submits that the ban on signs contained in Rule VII is such a prior restraint on purely expressive activity.

FIRST AMENDMENT FREEDOMS ARE APPLICABLE TO PLAINTIFF'S EXPRESSIVE ACTIVITY

The rights under the First Amendment are given to the "people" and act as a prohibition on both federal and state governmental action. This Court has held that the Due Process Clause of the Fourteenth Amendment of the Constitution precludes actions by the defendants herein which impermissibly restrain these rights. *Tinker v Des Moines Community School District*, 393 U.S. 503 (1969).

RULE VII CONTAINS AN IMPERMISSIBLE RESTRAINT ON PLAINTIFF'S FIRST AMENDMENT RIGHTS

The Louisiana Supreme Court correctly held that the sign plaintiff carried into the school board meeting in violation of Rule VII was "closely akin to pure speech and is entitled to comprehensive protection under the First Amendment." [Appendix "A"] *Tinker*, above. However, that Court incorrectly held "that Rule VII is neither unconstitutional on its face nor as applied to plaintiff. It is a permissive restriction on the place and manner of communicating views of citizens attending school board meetings." [Appendix "A"]

This Court has recognized that, within certain limits, government can regulate the unfettered exercise of free expression if the regulation is subject to reasonable time, place and manner restrictions. *Cox v New Hampshire*, 312 U.S. 569 (1941); *United States v O'Brien*, 391 U.S. 367 (1968). In reviewing such governmental regulation of free expression, this Court has developed the following guidelines to test the constitutional validity.

1) The significant governmental interest being served must be unrelated to the suppression of free expression. *United States v O'Brien*, above.

2) The regulation will be upheld only upon a showing that it serves a significant governmental interest. *Heffron v International Society of Krishna Consciousness, Inc.*, ___ U.S. ___ (1981).

3) The regulation must be narrowly written and interpreted so that the only free expression that is

curtailed is that which will materially and substantially interfere with the competing governmental interest. *Grayned v City of Rockford*, 408 U.S. 104 (1972); *Tinker*, above.

4) "The nature of a place, the pattern of its normal activities, dictate the kinds of regulations of time, place and manner that are reasonable." *Grayned*, at 116. In this regard, "[t]he crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." *Id.*

5) Where the restriction is otherwise valid, still it must leave open ample alternative channels for communicating the regulated expressive activity. *Virginia Pharmacy Board v Virginia Consumer Council*, 425 U.S. 748 (1976).

Plaintiff submits that, in holding Rule VII up to these guidelines, the Louisiana Supreme Court erred in upholding its constitutionality as a reasonable time, place and manner regulation in the following respects.

While the community does have an interest in ensuring that the school board can conduct its business in public meetings, the Rule cannot be permitted to censor and sacrifice free expression to the idealistic concept of "order and dignity". Admittedly there is a significant governmental interest in ensuring that the board be permitted to conduct its activities in public meetings. And that it be permitted to do so without suffering under intolerable conditions. However, these are *public* meetings to which the *public* is invited and must be permitted. Plaintiff submits that the "order and dignity" of

these meetings rises to a significant governmental interest sufficiently to restrain free expression only when that expression rises above mere inconvenience or annoyance. Such minor inconvenience to order and decorum is a hallmark of our democratic process and, indeed is a function of free expression in our system of government. *Terminiello v Chicago*, 337 U.S. 1 (1949). Thus, while "order and dignity" alone may well be a significant governmental interest in a totalitarian regime, in this nation it is only an idealistic concept that, absent the actual interference with the public meetings, cannot be employed to suppress free expression. Yet, this is precisely what Rule VII, as written and as interpreted by the Louisiana courts, has done to plaintiff's right to freedom of expression.

Closely related to the above stated deficiency of Rule VII is its violation of the guideline set out in *Grayned* that a time, place and manner regulation must be so narrowly tailored so as to further only the government's legitimate interest. Neither in the wording of Rule VII, nor in the evidence adduced to support it is there any indication that its restraint on free expression is "narrowly tailored" so as to further the significant governmental interest of permitting the school board to conduct its business in public meetings. The rule bans any hand-carried sign regardless of whether any particular sign, by its content or by the method of its use, impinges on the necessary conduct of the meeting. It is this very crucial misunderstanding of the concept of "reasonable" drafting of such a regulation that stands out in the concurring opinion of Justice Lemmon [Appendix "A"]. He admits that the "rule could have been more narrowly

circumscribed," but nevertheless finds it "reasonable." Plaintiff submits that this Court, in *Grayned*, requires that Rule VII be found constitutionally infirm in that it is so broadly drawn that it goes far beyond protecting a legitimate governmental interest, that is, it prohibits free expression unrelated to the necessity of conducting board meetings in a public forum.

The meetings of the school board are a "public forum." They are conducted on public property. All members of the public are invited and encouraged to come. Plaintiff submits that the nature of these meetings and the pattern of their normal activities do not dictate such a broadly tailored proscription of free expression as is contained in Rule VII. Thus, under the *Grayned* test, Rule VII is not a reasonable time, place and manner regulation. Contrary to the factual finding of the Louisiana Supreme Court, the only trial evidence concerning the normal attendance at these meetings is to the effect that approximately twenty (20) persons appear. The banned signs do not make any noise. In and of themselves, these signs are not a manner of expression basically incompatible with the normal activity of these meetings. Moreover, the Rule, as written and as enforced, does not require that the signs cause any disturbance before they are banned. These public school board meetings are not of the nature of a military base [*Greer v Spock*, 424 U.S. 828 (1976)] or of a prison [*Jones v North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119 (1977)]. Nor are they of the character of overly crowded passageways of a state fairground [*Heffron*, above] or of publicly owned property set aside for special non-public usage [*Adderley v Florida*, 385 U.S. 39 (1966); *Leham v*

City of Shaker Heights, 418 U.S. 298 (1974)]. These meetings are truly "public forums" and plaintiff's sign, for the carrying of which she was expelled and arrested, was not "basically incompatible with the normal activity" of these meetings. Thus, plaintiff submits that Rule VII is not a reasonable time, place and manner regulation and should be stricken as an unconstitutional restraint on her freedom of expression.

Lastly, and on the issue of ample alternate channels of communication, plaintiff submits that the Louisiana Supreme Court erred in finding that Rule VII left open such alternate channels. Several times in the controlling opinion and in the concurring opinion, the Court finds as a fact that the board's rules "permit a person to speak for five minutes on any subject on the agenda." [Appendix "A"] This is factually incorrect. The right of the public to speak at these meetings is found in Rule VI of the rules which is set out in its entirety as Appendix "I". That rule does not grant such a right. Rule VI(C) is clear in providing the public a right to speak at the meetings only when a motion is before the floor which requires a board vote. Thus, there is no right of the public to speak to all agenda items. The public's right to speak comes at a time before board members address the motion. Also, once the public's right to speak has ended under Rule VI, the motion on the floor can be amended or wholly substituted with no further public input. These defendants cannot be allowed to circumscribe the method, manner, time and even content of plaintiff's free expression as is done here. Under Rule VI, the content of plaintiff's free expression is limited to addressing a motion before the floor for a vote. The time of her free expression is limited

to five (5) minutes and then at a point in time when the motion can be wholly substituted or changed. The manner of her free expression is oral. Plaintiff submits that there was no showing by the defendants that there was a specific motion before the floor at the meeting at which she was arrested so as to permit her to orally state the expression on her sign. That meeting was not called to discuss the merits of desegregation, but to take action on a specific plan that was on the agenda. The Louisiana Supreme Court's decision states that, in addition to this right to speak for five (5) minutes, plaintiff had ample alternate means of communicating the idea on her sign by carrying it outside the building. Yet, this Court has held that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Spence v Washington*, 418 U.S. 405, 411 (1974). Regardless, the issue of ample alternate channels of communication cannot be used to legitimate an otherwise unreasonable time, place and manner regulation as plaintiff demonstrates elsewhere herein.

COMPETING GOVERNMENTAL INTEREST NOT THREATENED BY PLAINTIFF'S SIGN

Plaintiff has argued above that Rule VII aborts her free expression for a reason that falls short of the requirement of a "significant governmental interest." Were this not so, plaintiff submits that Rule VII would still be an invalid regulation because the free expression that is banned by this Rule does not pose a serious threat to the conduct of the meetings. Prior to the night of plaintiff's arrest, there was no ban on such signs. The

evidence adduced at trial is as set forth in the Statement of the Case. Such evidence does not support the proposition that these banned signs constituted a real threat to the conduct of normal board meetings. To be a valid time, place and manner regulation the defendants must demonstrate that hand-carried signs will "materially and substantially interfere" with its meetings. *Tinker*, at 509. The evidence is to the effect that such signs were "distracting," which was defined by the board witnesses generally to mean that these signs diverted their attention from the agenda. Since this is a public place, this type of "interference" should be dealt with by the averting of the eyes. *Cohen v California*, 403 U.S. 15 (1971). Although there was opinion testimony given by Armstrong and Richard that these signs created "problems" and were "disruptive" at the meetings, the record is bare of factual circumstances to buttress these assertions. Only at a time of labor unrest with its employees was a meeting materially interfered with and this was due to the excessive number of people present, not to signs. Certainly, in a normal meeting, with approximately twenty (20) people present, there has been no showing that the banned signs materially and substantially interfere. The Fifth Circuit has held that free expression cannot be banned as Rule VII does unless such expression " 'will surely result in direct immediate, and irreparable damages.' *New York Times Co. v United States*, 403 U.S. 713, 730." *Society of Krishna Consciousness of Atlanta v Eaves*, 601 F. 2d 809 (1979). These defendants have not and cannot make any such showing. In truth, Rule VII appears to have been formulated and enforced out of an "undifferentiated fear or

apprehension of disturbance [which] is not enough to overcome the right to freedom of expression." *Tinker*, at 508.

INSUFFICIENT STANDARD USED TO TEST THE DEFENDANTS JUSTIFICATION FOR RULE VII

The Louisiana Supreme Court abrogated its duty by exercising a standard of judicial review much too limited. The proper standard of review should be determined by the nature of the right violated rather than the power being exercised or the specific limitation imposed. Thus this Court has recently reaffirmed a prior holding that it is the court's obligation to assess the substantiality of the justification offered for a regulation that impinges on free expression.

> Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of [First Amendment] rights. 308 US, at 161, 84 L Ed 155, 60 S. Ct. 146.
>
> *Schad v Mt. Ephraim*, ___ U.S. _____ (1981).

In reviewing the governmental interest competing with free expression the Louisiana Supreme Court should have first determined whether that interest was legiti-

mate. Then that court should have inquired as to whether that interest was sufficient to justify the encroachment on First Amendment freedoms. The Court must make its independent "inquiry into the imminence and magnitude of the danger said to flow from the particular utterance and then balance the character of the evil, as well as its likelihood, against the need for free and unfettered expression. The possibility that other measures will serve the State's interests should also be weighed." *Landmark Communications, Inc. v Virginia*, 435 U.S. 829, 843 (1978). *Landmark* also holds that, while the defendants may declare the reasons for the regulation, the "judicial function commands analysis of whether the specific conduct charged falls within the reach of the statute and if so whether the legislation is consonant with the Constitution. Were it otherwise, the scope of freedom of speech and of the press would be subject to legislative definition and the First Amendment as a check on legislative power would be nullified." *Ibid.* at 844. The defendants here, as in *Landmark*, offered little more than assertion and conjecture to support their claim that Rule VII was required to conduct school board meetings.

FACIAL OVERBREADTH OF RULE VII

Even if Rule VII was not otherwise constitutionally infirm, it is so because of the doctrine of overbreadth. Under this doctrine a regulation is unconstitutional if the governmental purpose in controlling an activity constitutionally subject to such regulation attempts to achieve its goal by means which sweep unnecessarily broadly. *Zwickler v Koota*, 389 U.S. 241 (1967). Overbroad regu-

lations create the hazard of impairing First Amendment freedoms since those persons covered by the regulations are bound to limit their behavior to that which is unquestionably safe. *Dombrowski v Pfister*, 380 U.S. 479 (1965). First Amendment freedoms need breathing space to survive and governmental regulation in this area must be accomplished with narrow specificity. *Re Primus*, 436 U.S. 412 (1978). For a regulation such as Rule VII to be unconstitutional for its facial overbreadth, it must proscribe free expression in a real and substantial manner. Rule VII does precisely that. It also must not have been given a narrowing interpretation by the State Courts. This also obtains in the decision of the Louisiana Supreme Court herein. As the Louisiana Supreme Court decision correctly held, the communication banned by Rule VII is "pure speech" and not speech mixed with conduct. There is no limiting language in either the Rule or in the Louisiana Supreme Court's decision which would narrow the scope of the ban on signs so that it became effective only when such signs threatened the conduct of the board meetings. Thus Rule VII "sweeps within its prohibitions what may not be punished." *Grayned*, at 115. The regulation of expression in *Grayned* was found not to be overbroad precisely because it was so narrowly drawn as to punish "only conduct which disrupts or is about to disrupt normal school activities. " *Ibid*, at 119. This points out the exact problem with Rule VII. It does not prohibit signs which disrupt or are about to disrupt board meetings. It prohibits all communication by such signs. Moreover, it punishes such communication by criminal arrest in its application. This Court has held that, "[t]he limitation on First

Amendment freedom must be no greater than is necessary or essential to the protection of the particular governmental interest involved." *Procunier v Martinez*, 416 U.S. 396, 413 (1974). "The separation of legitimate from illegitimate speech calls for more sensitive tools," than the school board has supplied with Rule VII. *Gooding v Wilson*, 405 U.S. 518, 528 (1972).

OVERBREADTH AS APPLIED

The stipulated facts are that neither plaintiff nor her sign posed any threat to the order or dignity of the meeting or to the attending public. Plaintiff submits that this is absolute proof of the constitutional overbreadth of Rule VII as it was applied to her. While her exercise of "pure speech", in the form of her sign, in no way posed any threat to the asserted governmental interest justifying Rule VII, plaintiff was removed from the meeting and arrested for criminal trespass. In *Grayned*, this Court upheld a regulation against an attack on the grounds of its facial overbreadth; however, the Court states at footnote 50 on page 121, that "[i]t is possible, of course, that there will be unconstitutional applications; but that is not a matter which presently concerns us." Plaintiff submits that this is precisely the matter which concerns the Court in this case.

CONCLUSION

The defendants enacted Rule VII which prohibited hand-carried signs in its public meetings. It did so without there ever being an occasion where such signs materially and substantially interfered with its meetings. The

restraint on free expression in Rule VII affected "pure speech" in a "public forum." The Rule went beyond the bounds of significant governmental interest. The Rule was so broadly drawn and interpreted as to inhibit free expression unrelated to the interest involved. Plaintiff was arrested for refusing to leave with her sign when it was in no way disturbing the public meeting.

Accordingly, and for the reasons set forth above, the Court should exercise its appellate jurisdiction and require plenary consideration, with briefs on the merits and oral argument, for the resolution of the questions raised.

RESPECTFULLY SUBMITTED

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I, WOODROW W. WYATT, the attorney for Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of May, 1982, I served three copies of the Jurisdictional Statement on appellees by mailing the same, through the United States mail, to John F. Ward, Jr., counsel of record for the East Baton Rouge Parish School Board and George Richard, at 1111 South Foster Drive, Suite C, Baton Rouge, Louisiana 70896. I further certify that all parties required to be served have been served.

WOODROW W. WYATT

Appendix A

OPINIONS OF THE LOUISIANA SUPREME COURT

SUPREME COURT OF LOUISIANA

No. 81-C-0946

FANNIE GODWIN

v.

EAST BATON ROUGE PARISH SCHOOL BOARD ET AL.

ON WRIT OF CERTIORARI OR REVIEW TO THE COURT OF APPEAL, FIRST CIRCUIT, EAST BATON ROUGE PARISH, LOUISIANA

MARCUS, Justice

Fannie Godwin instituted this action against the East Baton Rouge Parish School Board and its president, George H. Richard, seeking a declaration that Rule VII of the Rules of Procedure of said board,[1] both

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[1]Rule VII of the Rules of Procedure of the East Baton Rouge Parish School Board provides:

ORDER AND DECORUM AT SCHOOL BOARD AND COMMITTEE MEETINGS.

It is in the public interest, and the public demands, that meetings of the School Board or its Committees, in handling the public's business, be conducted in an orderly and dignified manner. To this end, the following rules are established for the conduct of all persons, including Board members and staff members, attending a meeting of the School Board or its Committees.

No signs, poster, placards, etc. shall be affixed to the walls, doors, etc. of the School Board office building or any room therein, except by the School Board staff in connection with School Board business and then only with permission of the

on its face and as applied to her, violated her rights of freedom of speech, to assemble peaceably and to petition government for a redress of grievances under the first amendment to the federal constitution and sections 7 and 9 of article 1 of our state constitution.[2] She further sought an injunction prohibiting the enforcement of said rule.

After a hearing, the trial court upheld the constitutionality of Rule VII and denied the application for a preliminary injunction. Plaintiff appealed. The court of

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Superintendent. No sign, placard, or poster which is carried by hand shall be permitted in the School Board office building or any of its rooms.

All persons attending meetings of the School Board or of its Committees must be recognized by the presiding officer before speaking. In return, the presiding officer and other Board members shall courteously receive the comments made by such persons.

Any person who fails or refuses to obey the rulings and directions of the presiding officer, or otherwise disrupts the meeting in any manner, shall be requested by the presiding officer to leave the meeting room for the remainder of that meeting.

If any person refuses to follow the directions of the presiding officer, the presiding officer shall cause such person to be removed from the meeting as authorized by L.R.S. 42:6.1(C) and other applicable laws of the State of Louisiana.

[2]U.S. Const. amend. I, as applied to the states through the fourteenth amendment, provides that: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." La. Const. art. 1, §7 provides that: "No law shall curtail or restrain the freedom of speech. . . ." La. Const. art. 1, §9 provides: "No law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances."

appeal affirmed.[3] On plaintiff's application, we granted certiorari to review the correctness of that decision.[4]

The sole issue presented for our consideration is whether that portion of Rule VII that provides that "[n]o sign, placard, or poster which is carried by hand shall be permitted in the School Board office building or any of its rooms" is unconstitutional either on its face or as applied to plaintiff under the first amendment to the federal constitution and sections 7 and 9 of article 1 of our state constitution guaranteeing freedom of speech and the right to assemble peaceably and petition government for a redress of grievances.

At the hearing on the application for a preliminary injunction, certain facts were stipulated between the parties which may be summarized as follows:

On December 4, 1980, the East Baton Rouge Parish School Board adopted new "Rules of Procedure" which became effective January 5, 1981. On January 5, 1981, the school board met at the Instructional Resource Center of the school board, a publicly-owned building. The principal purpose of the meeting was to discuss, deliberate and take official action toward adopting a proposed plan for desegregating the public schools in the parish. Mrs. Godwin attended the meeting as a member of the public and sat at the rear of the meeting room with no one seated behind her. She carried a sign approximately 15 x 23 inches in size which she displayed by standing next to her chair and holding it above her head. The sign depicted a black and a white child and stated: "Desegre-

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[3] 403 So. 2d 72 (La. App. 1st Cir. 1981).

[4] _____ So. 2d _____ (La. 1981).

gation can help people know one another better so they can work together better." At no time did Mrs. Godwin engage in any loud or boisterous conduct nor did her behavior threaten the orderly conduct of the meeting. She conducted herself in a quiet and orderly manner at all times. The school board president, George Richard, interrupted the agenda and requested Mrs. Godwin to remove the sign or herself from the meeting. He read her the rule prohibiting signs of which she was already aware. When she failed to comply, he recessed the meeting, left the bench or podium and approached Mrs. Godwin in the rear of the room where he again asked her to remove the sign or herself. Upon her refusal to do so, she was arrested for trespass and removed from the building by the police.

In addition to the above stipulation of facts, Mrs. Eileen Armstrong, immediate past-president and ten-year member of the board, testified that in past meetings, hand signs had created a problem by blocking the view of others at the meetings; by distracting the members of the school board from their deliberations; and by creating a potential safety hazard to others at the meetings. She also stated that Mrs. Godwin could have expressed the same sentiments on the sign at the microphone verbally or by submission of a written document. A written agenda is prepared for each regular school board meeting. Rules permit a person to speak for five minutes on any subject on the agenda. Discussion of a subject not on the agenda requires the vote of two-thirds of the board. Mr. Richard, president and six-year member of the board, also testified that signs had been disruptive of the meetings in the past. Both he and Mrs.

Armstrong stated that past disruptions had led to the promulgation of Rule VII.

Communication by signs, placards, or posters is closely akin to "pure speech" and is entitled to comprehensive protection under the first amendment. *See Tinker v. Des Moines Independent School District*, 393 U.S. 503 (1969). The first amendment, however, does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. *Heffron v. International Society for Krishna Consciousness*, 101 S.Ct. 2559 (1981).[5] Thus, Mrs. Godwin's display of a hand-carried sign, like other forms of expression protected by the first amendment, is subject to reasonable time, place and manner restrictions. As stated by the United States Supreme Court in *Heffron, supra*, at 2564:

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[5]*Heffron* involved a Minnesota state fair rule requiring organizations desiring to distribute and sell religious literature and to solicit donations to conduct those activities only at an assigned location within the fairgrounds. The asserted governmental interest was the need to maintain the orderly movement of the crowd given the large number of exhibitors and persons attending the fair. The United States Supreme Court found that the restriction was not based upon either the content or subject matter of the speech, it was not open to arbitrary application, it served a substantial state interest, it was not an unnecessary regulation because less restrictive means would not adequately deal with the problem and alternative forums for the expression of the protected speech existed despite the effects of the rule. Accordingly, the Minnesota State Fair Rule was upheld as a valid place and manner restriction. Four Justices concurred in part and dissented in part. These Justices agreed with the majority insofar as it upheld the rule's restriction on sales and solicitations. They dissented, however, from the majority's approval of the rule's restriction on the distribution of literature.

> We have often approved restrictions of that kind provided that they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication of the information.

The issue here then is whether Rule VII is a permissible restriction on the place and manner of communicating the views of citizens attending school board meetings, more specifically, whether the school board may exclude from its meetings all hand-carried signs.

A major criterion for a valid time, place and manner restriction is that the restriction "may not be based upon either the content or subject matter of the speech." *Heffron, supra.* Rule VII qualifies in this respect since it applies even-handedly to all who wish to bring hand-held signs into school board meetings. No sign, placard or poster which is carried by hand is permitted in the school board office building or any of its rooms.

Moreover, since all hand-carried signs are forbidden by the rule, no discretion is vested in the school board to permit some hand signs while not allowing others. Hence, Rule VII is not open to the kind of arbitrary application that has been condemned as inherently inconsistent with a valid time, place and manner regulation because such discretion has the potential for becoming a means of suppressing a particular point of view. *Heffron, supra,* and cases cited therein.

A valid time, place and manner restriction must also "serve a significant governmental interest." *Heffron, supra.* Here, the principal justification asserted by the

school board in support of Rule VII is the need to ensure that its meetings are conducted in an orderly and dignified manner.[6]

School board meetings are held in a room of the school board office building. A written agenda is prepared for each school board meeting. Rules permit a person to speak for five minutes on any subject on the agenda. Discussion of a subject not on the agenda requires the vote of two-thirds of the board. The purpose of school board meetings is to allow the duly elected representatives of the people to consider and act upon matters of importance to the operation of the school system. It is in the best interests of the citizens of East Baton Rouge Parish that such meetings be conducted in an orderly and expeditious manner permitting full presentation of information and viewpoints by interested citizens. Any individual, group or organization may orally address the board on an agenda item for a period not to exceed five minutes or submit a written presentation of his, her or their views. It is apparent that the board's interest in conducting its meetings in an orderly and dignified manner is a substantial consideration and a valid governmental objective.

In addition, consideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest

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[6]In addition, the school board asserted the following interest: (1) safety of persons in the audience; (2) the right of all persons present to be able to observe the deliberations of the school board; and (3) the need to curb the distracting and disruptive exhibition and waving of signs during the course of the meeting.

must be assessed in light of the characteristic nature and function of the particular forum involved. *Heffron*, *supra*. For example, there are significant differences between city streets (which have "immemorially been held in trust for the use of the public and, . . . have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions," *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939)) and school board meetings. As stated in *Heffron*: "A street is continually open, often uncongested, and constitutes not only a necessary conduit in the daily affairs of a locality's citizens, but also a place where people may enjoy the open air or the company of friends and neighbors in a relaxed environment." On the other hand, a school board meeting, as described above, is a weekly event attracting great numbers of citizens who come to view the meeting and/or express their opinions on items listed on the agenda for that meeting. The demand for decorum is much more compelling in the context of a school board meeting.

Given these considerations, we find that the school board's interest in excluding all hand-carried signs from its meetings is sufficient to satisfy the requirement that a place or manner restriction must serve a substantial governmental interest.

Finally, we conclude that the restriction imposed by Rule VII leaves open ample alternative channels for communication of the information. The rule does not prevent Mrs. Godwin from carrying her sign anywhere outside the school building and its rooms. More importantly, the rule does not deny access within the forum

in question. Mrs. Godwin may attend the school board meeting and communicate her ideas within the forum by expressing her views orally on an agenda item for a period of five minutes or by submitting a written document setting forth her views. The school board meeting is a limited public forum in that it exists to provide a means for a great number of citizens to present their views on school board agenda items in an efficient and orderly fashion. Considering the limited function of the school board meeting and the area in which it operates, we consider that there are ample alternative channels for communication of the information.

In sum, we conclude that Rule VII is neither unconstitutional on its face nor as applied to plaintiff. It is a permissive restriction on the place and manner of communicating views of citizens attending school board meetings.[7] Accordingly, we affirm the judgments of the courts below.

DECREE

For the reasons assigned, the judgment of the court of appeal is affirmed.

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[7]In view of this finding, plaintiff's contention that Rule VII is unconstitutionally overbroad has no merit. Likewise, plaintiff's contention that Rule VII violates La. Const. art. 12, §3 and Louisiana's Open Meeting Law, La. R.S. 42:4.1, *et seq.*, is also without merit.

SUPREME COURT OF LOUISIANA

No. 81-C-0946

FANNIE GODWIN

VERSUS

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

LEMMON, Justice, Concurring

The prohibitory rule could have been more narrowly circumscribed.[1] But when competing interests are balanced in determining constitutionality, the rule limiting freedom of expression for a legitimate governmental interest must only be drawn reasonably, not perfectly. The fact that a more nearly perfect rule might have been adopted does not render unconstitutional the rule that was adopted, as long as that rule provides a reasonable balance between the competing interests.

The courts should not require modification of this reasonable rule simply because the rule is susceptible of further refinement, in the absence of an unnecessary and significant limitation on freedom of expression. When other available methods of expression are considered, this rule is not unconstitutionally restrictive as to the time, place and manner in which visitors in the office building may express themselves.[2]

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[1]For example, the rule could have allowed those hand held signs which are of a certain size, which are held against the wall in the rear, which are not waved, etc.

[2]Visitors may hang signs around their necks, wear signs on clothing, wear arm bands or use other forms of communication other than hand held signs. All persons are allowed to address the Board for limited periods as to agenda items, and plaintiff had done so many times.

SUPREME COURT OF LOUISIANA

No. 81-C-0946

FANNIE GODWIN

VERSUS

EAST BATON ROUGE PARISH SCHOOL BOARD ET AL.

DIXON, Chief Justice (dissenting)

CALOGERO, Justice (dissenting for reasons assigned by Dixon, C.J.)

DENNIS, Justice (dissenting for reasons assigned by Dixon, C.J.)

I respectfully dissent.

The law seems simple enough.

> "No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom." Art. 1, Section 7, La. Const. 1974.

Sometimes the breach of a clear provision of law is justified by necessity. Absolutely no necessity for the abridgment of Fannie Godwin's freedom of speech (words on posters are a form of speech) has been or can be shown, nor has she abused that right.

The majority has ignored this clear, unanswerable, applicable provision of the Louisiana Constitution.

Appendix B

OPINION OF THE COURT OF APPEAL

No. 14,363

COURT OF APPEAL
FIRST CIRCUIT
STATE OF LOUISIANA

FANNIE GODWIN

VERSUS

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

ON SUPERVISORY WRIT TO THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HONORABLE WILLIAM H. BROWN, JUDGE

BEFORE: ELLIS, COLE, WATKINS, JJ

ELLIS, J:

In this suit, plaintiff Fannie Godwin seeks to enjoin the East Baton Rouge Parish School Board from enforcing Rule VII of its Rules of Procedure on the ground of its alleged unconstitutionality. Rule VII, which was adopted on December 4, 1980, provides, in part, as follows:

"VII. ORDER AND DECORUM AT SCHOOL BOARD AND COMMITTEE MEETINGS.

"It is in the public interest, and the public demands, that meetings of the School Board or its Committees, in handling the public's business, be conducted in an orderly and dignified manner. To this end, the following rules are established for the conduct of all persons, including Board members and staff mem-

bers, attending a meeting of the School Board or its Committees.

"No signs, poster, placards, etc. shall be affixed to the walls, doors, etc. of the School Board office building or any room therein, except by the School Board Staff in connection with School Board business and then only with permission of the Superintendent. No sign, placard, or poster which is carried by hand shall be permitted in the School Board office building or any of its rooms."

On January 5, 1981, Mrs. Godwin attended a School Board meeting, bringing with her a hand carried sign measuring about 15 by 23 inches. During the meeting, she stood in the back of the room, holding the sign over her head. She was asked to remove the sign, and, upon her refusal to do so, was asked to leave the meeting. On her continuing refusal to remove the sign or to leave, Mrs. Godwin was arrested and removed from the meeting. It was stipulated that Mrs. Godwin knew of Rule VII before the meeting, and had informed others of her intention to carry a sign into the meeting; that she indulged in no loud or boisterous conduct; and that the public did not react to her sign in a loud or disruptive manner.

The president and immediate past president of the School Board testified relative to the adoption of Rule VII. They testified that, in past meetings, hand held signs had created a problem by blocking the view of others at the meetings; by distracting the members of the School Board from their deliberations, by creating a circus-like atmosphere, and by creating a potential

hazard, should signs be dropped on those at the meeting. With the exception of persons being injured by falling signs, specific examples of such occurrences were proven.

Plaintiff alleges that Rule VII violates her right of free speech under the First and Fourteenth Amendments to the Constitution of the United States, and Article I, Sections 7 and 9 of the Louisiana Constitution of 1974. Under those provisions, freedom of speech is a fundamental right, which may not be abridged or limited unless in the furtherance of a compelling state interest. *Cox v. State of Louisiana*, 379 U.S. 536, 85 S.Ct. 453 (1965); *Tinker v. Des Moines Independent Com. School Dist.*, 393 U.S. 503, 89 S.Ct. 733 (1969).

As pointed out by the trial judge, the issue in this case is not the propriety of the arrest of the plaintiff, nor the content of the writing on the sign. The issue is whether or not the School Board may prohibit persons from bringing hand held signs, regardless of content, into its meetings.

We think the trial judge correctly resolved the question. The record affirmatively shows that hand carried signs have been both disruptive and distracting in previous meetings. All persons attending School Board meetings are given the opportunity to speak on matters of interest to them. We find that, since an equivalent method of expression is available to all persons attending School Board meetings, and since hand carried signs have proven to be disruptive and distracting at previous meetings, the restriction placed on bringing such signs

into School Board meetings is reasonable and designed to permit the business of the School Board to be conducted in an orderly manner.

We therefore hold Rule VII to be a constitutional exercise of the authority of the School Board, and that the trial judge properly denied the injunctive relief sought by plaintiff.

The judgment complained of is affirmed, at plaintiff's cost.

AFFIRMED.

Appendix C

ORAL REASONS OF THE TRIAL COURT

Number 242,956 Division "I"

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

FANNIE GODWIN

VERSUS

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

ORAL REASONS FOR JUDGMENT
THE HONORABLE WILLIAM H. BROWN,
JUDGE PRESIDING
TUESDAY, JANUARY 27, 1981

Mrs. Godwin has filed suit, on December 13, 1981, seeking an injunction against the East Baton Rouge Parish School Board and George H. Richard, as President of the East Baton Rouge Parish School Board, from enforcing Rule VII of the Rules of Procedure that were adopted by the School Board on or about December 4, 1980; asking that Rule VII be declared unconstitutional and that the School Board be enjoined from enforcing Rule VII.

The parties amicably stipulated as to the facts in this case, which were that on or about January 5, 1981, Mrs. Godwin attended an open meeting of the School Board with a hand carried sign measuring some fifteen inches by twenty-three inches. It has been more specifically referred to as Plaintiff Exhibit Number-1, reflected in the photograph attached to the petition.

The stipulation was that she was asked to remove the sign; when she refused to, the meeting was halted and Mr. Richard again asked her to remove the sign and/or to leave and she refused and she was subsequently arrested. During the time that Mrs. Godwin had possession of the sign, she was in the back of the School Board room.

Rule Number VII provides that: "It is in the public interest, and the public demands, that meetings of the School Board or its Committees, in handling the public's business, be conducted in an orderly and dignified manner. To this end, the following rules are established for the conduct of all persons, including Board members and staff members, attending a meeting of the School Board or its Committees." This paragraph shows the purpose of the rule. The Rule further provides that: "No signs, poster, placards, etc. shall be affixed to the walls, doors, etc. of the School Board office building or any room therein, except by the School Board staff in connection with the School Board business and then only with permission of the Superintendent." This particular aspect of the Rule is not in contest in the meeting before this Court this afternoon; however, this phrase is: "No signs, placard, or poster which is carried by hand shall be permitted in the School Board office building or any of its rooms." The Rule further provides that a person who refuses to obey the rules may be removed from the meeting as authorized by L.R.S. 42:6.1(C) and other applicable laws of the State of Louisiana.

Mrs. Godwin, in her petition, has alleged that Rule VII violates her rights under the First Amendment of

the United States Constitution and under Article I, Section 7 and Section 9 of the Louisiana Constitution, and Article 7, Section 3 of the Louisiana Constitution.

The First Amendment provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or bridging the freedom of speech or of the press, or the right of the people to peaceably assemble and to petition the government for redress of grievances.

Article I, Section 7 of the Louisiana Constitution provides that no law shall curtail or restrain freedom of speech or press. Every person may speak, write, and publish his sentiments on any subject, but is responsible for abuse of that freedom.

Article I, Section 9 of the Louisiana Constitution provides that no law shall impair the right of any person to assemble peaceably or to petition government for a redress of grievances. Further, Article XII, Section 3 of the Louisiana Constitution provides that no person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

In essence, these are the applicable Amendments and Articles and Sections that the applicant in this case has informed the Court as being violated by the enforcement of Rule VII of the East Baton Rouge Parish School Board.

The issue is not whether or not this person was arrested. The issue is not whether or not the writing on the poster was or was not offensive to School Board

members. The question before this Court is whether or not a person has a right to bring a hand carried sign or placard or poster into the School Board office building and its rooms during meetings.

Freedom of speech is recognized as a fundamental right under both our State and Federal Constitutions. When a state seeks to limit a fundamental right, it must show compelling state interest is achieved by the restriction and there is no less restrictive measure which could be taken.

Here, the School Board is attempting to conduct its hearings in an orderly manner, with as many people present as possible. Certainly there must be rules and procedures for conducting public meetings, otherwise chaos would result. The Courts have recognized that under both the Louisiana and U.S. Constitution that time, manner, and place restrictions may be imposed on the freedom of speech. *Greer v. Spock*, 424 U.S. 828, 1976, and *Beard v. City of Alexandria*, 341 U.S. 622, 1951.

Certainly the School Board cannot restrict speech simply because it might dislike the views that are being expressed. However, the Board has a legitimate interest in preventing disruptions in Board meetings which might justify the need for adoption of the rules. It is incumbent upon the School Board to show or carry its burden of showing the appropriateness of denying signs which may be carried by hand into the School Board building and its rooms.

The Court has heard testimony from Mr. Richard

who testified that during his term on the School Board there have been instances—he cannot be specific as to the specific instance—of where signs have been disturbing, distractful and, because of location, prevented other people perhaps from seeing. Mrs. Armstrong testified that she has experienced the same instance.

It is interesting to note that the particular rules were not enacted until 1981. Oftentimes rules are not enacted until after there has been an obvious necessity that rules are necessary. From my appreciation of the testimony, this became obvious from the expressions that occurred during the strike situation that occurred at the School Board. Obviously from that instance, the School Board realized that it was necessary to have certain rules for the future. These rules were not just adopted arbitrarily; it was for a specific purpose, to be able to conduct School Board meetings in an orderly fashion. The Court does not feel that these rules are arbitrary and capricious. The Court feels that, as stated in the Supreme Court in the *Greer* and *Beard* cases, there can be some restrictions imposed upon the freedom of speech. I can see and appreciate the need of rules to prohibit people from carrying signs in meetings, blocking the views of other people; they certainly could be dangerous if dropped, hitting someone else. The Court does not believe it is necessary for an injury to occur before a rule would have to be adopted.

The Court finds that Rule VII is not unconstitutional and will not issue the preliminary injunction.

To plaintiff, Mrs. Fannie Godwin, I appreciate that changes for betterment often result from the fortitude of

people like yourself who have taken an active interest in government—in your instance, the government of the local School Board. This ruling is not to be interpreted to mean that this Court discourages you from continuing your participation in any form of government that you would like to participate; it merely means that in participating you must do so in compliance with lawful rules, which I have found that this Rule is lawful. Democracy, as I appreciate what is involved, has been brought about by people like yourself who have taken an active interest in their government.

The Court will sign a written judgment in connection with the oral reasons given; costs to be borne by the petitioner.

Filed January 28 1981
Signed Frances I. Williamson
Deputy Clerk
A True Copy January 28 1981
Frances I. Williamson
Deputy Clerk

Appendix D

JUDGMENT OF THE TRIAL COURT

Suit No. 242,956 Div. "I"

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

FANNIE GODWIN

VERSUS

EAST BATON ROUGE PARISH SCHOOL, ET AL.

JUDGMENT

This cause came on the 27th day of January, 1981, to be heard.

PRESENT: Woodrow W. Wyatt, Attorney for Plaintiff.

John F. Ward, Jr., Attorney for Defendants.

After hearing the pleadings, evidence and arguments of counsel, the Court considering the law and the evidence to be in favor of the defendants, East Baton Rouge Parish School Board and George H. Richard, and against the plaintiff, Fannie Godwin, for the reasons that day orally assigned,

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the defendants and against the plaintiff declaring Rule VII of the "Rules of Procedure of the East Baton Rouge Parish School Board" as adopted on December 4, 1980 to be constitutionally and statutorily valid and enforceable.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Rule for injunction be dismissed, that the writ of injunction herein prayed for be denied, and that plaintiff's demands be rejected at her costs.

Judgment read and signed this 5th day of February, 1981, at Baton Rouge, Louisiana.

/s/ William H. Brown
JUDGE

Appendix E

DENIAL OF REHEARING BY LOUISIANA SUPREME COURT

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

FROM: CLERK OF SUPREME COURT OF LOUISIANA

On the 19th day of February, 1982, the following action was taken by the Supreme Court of Louisiana, composed of Chief Justice John A. Dixon, Jr., and Associate Justices Pascal F. Calogero, Jr., Walter F. Marcus, Jr., James L. Dennis, Fred A. Blanche, Jr., Jack Crozier Watson, and Harry T. Lemmon, in the cases listed below:

REHEARINGS DENIED:

81-0-0946 Godwin v. East Baton Rouge Parish School Board

DIXON, C.J., CALOGERO & DENNIS, JJ., would grant a rehearing.

Appendix F

SUPREME COURT
STATE OF LOUISIANA
Docket Number: 81-C0946

FANNIE GODWIN

VERSUS

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Fannie Godwin, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Louisiana Supreme Court, affirming the judgment of the trial court, entered in this proceeding on December 14, 1981.

This appeal is taken pursuant to Title 28, United States Code, Section 1257, subparagraph 2.

Dated May 10, 1982.

WOODROW W. WYATT
3623 Perkins Road—Suite 6
Baton Rouge, Louisiana 70808

Telephone (504) 383-5689

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

I, Beverly Thomas, depose and say that I am a Clerk in the office of Woodrow W. Wyatt, attorney of record for Fannie Godwin, the appellant herein, and that on May 10, 1982, pursuant to Rule 33, Rules of the Supreme Court, I served one (1) copy of the attached Notice of Appeal to the Supreme Court of the United States on each of the parties required to be served herein, as follows:

On East Baton Rouge Parish School Board and George Richard, the appellees herein, by mailing the copies in duly addressed envelopes, with first class postage prepaid, to John F. Ward, Jr., counsel of record for said appellees at his office at P. O. Box 65236, Baton Rouge, Louisiana, 70896.

All parties required to be served have been served.

Beverly Thomas

SWORN TO AND SUBSCRIBED Before Me, on May 10, 1982

NOTARY PUBLIC
Leo J. Berggreen

Appendix G

LOUISIANA REVISED STATUTE 17:81

SUB-PART B. POWERS AND DUTIES OF SCHOOL BOARDS AND PARISH SUPERINTENDENTS

§ 81. General powers of board

Each parish school board shall determine the number of schools to be opened, the location of the school houses, the number of teachers to be employed, and select such teachers from nominations made by the parish superintendent, provided that a majority of the full membership of the board may elect teachers without the endorsement of the superintendent. The boards shall have authority to employ teachers by the month or by the year, and to fix their salaries; provided that there shall be no discrimination as to sex in the fixing thereof and provided further, that it is not the purpose of this Section to require or direct the reduction of any salary, or salary schedule, presently in force. The boards shall see that the provisions of the state school laws are complied with.

Each school board is authorized to make such rules and regulations for its own government, not inconsistent with law or with the regulations of the State Board of Elementary and Secondary Education, as it may deem proper. [Emphasis supplied]

The regular meetings of each board shall be held at least once each month on such day as each board shall select. Additional regular meetings may be held as each board designates. Special meetings may be held as boards determine or as occasion may require.

Each school board shall exercise proper vigilance in securing for the schools of the parish all funds destined for the support of the schools, including the state funds apportioned thereto, and all other funds.

The secretary of each board shall keep a record of all transactions and proceeding(s) of the board.

Parish school boards may receive land by purchase or donation for the purpose of erecting school houses; provide for and secure the erection of same, construct such outbuildings and enclosures as shall be conducive to the protection of property, and make repairs and provide for the necessary furniture, equipment and apparatus.

They have the power to recover for any damage that may be done to the property in their charge; they may change the location of a school house, sell or dispose of the old site, or of any site which for any reason can no longer be used or which is unused and unnecessary or unsuitable as such, and use the proceeds thereof for procuring a new one. Provided that the Orleans Parish School Board shall have authority to prescribe the rules and the regulations to govern the building and equipping and repairing of school houses, and the dates of the meetings of that board.

The provisions of this Section shall not affect the provisions of R.S. 17:461 through 17:463 relative to the Orleans Parish School Board.

Amended by Acts 1976, No. 411, § 1.

Appendix H

RULE VII OF THE RULES OF PROCEDURE OF THE EAST BATON ROUGE PARISH SCHOOL BOARD

RULES OF PROCEDURE OF THE EAST BATON ROUGE PARISH SCHOOL BOARD

. . . . . .

VII. ORDER AND DECORUM AT SCHOOL BOARD AND COMMITTEE MEETINGS.

It is in the public interest, and the public demands, that meetings of the School Board or its Committees, in handling the public's business, be conducted in an orderly and dignified manner. To this end, the following rules are established for the conduct of all persons, including Board members and staff members, attending a meeting of the School Board or its Committees.

No signs, poster, placards, etc. shall be affixed to the walls, doors, etc. of the School Board office building or any room therein, except by the School Board staff in connection with School Board business and then only with permission of the Superintendent. *No sign, placard, or poster which is carried by hand shall be permitted in the School Board office building or any of its rooms.* [Emphasis supplied]

All persons attending meetings of the School Board or of its Committees must be recognized by the presiding officer before speaking. In return, the presiding officer and other Board members shall courteously receive the comments made by such persons.

Any person who fails or refuses to obey the rulings and directions of the presiding officer, or otherwise disrupts the meeting in any manner, shall be requested by the presiding officer to leave the meeting room for the remainder of that meeting.

If any person refuses to follow the directions of the presiding officer, the presiding officer shall cause such person to be removed from the meeting as authorized by L.R.S. 42:6.1(C) and other applicable laws of the State of Louisiana.

Appendix I

RULE VI OF THE RULES OF PROCEDURE OF THE EAST BATON ROUGE PARISH SCHOOL BOARD

VI. CONDUCT OF SCHOOL BOARD MEETING.

A. The purpose of School Board meetings is to allow the duly elected representatives of the people to consider and act upon matters of importance to the operation of the school system which are within the jurisdiction and authority of the School Board. It is in the best interests of the citizens of this parish that such meetings be conducted in an orderly and expeditious manner which permits full presentation of information and viewpoints by interested citizens, followed by thorough discussion among the School Board, the Superintendent and designated members of the staff and concluded with debate and final decisions by the Board on those items of business listed on the agenda. To that end, the following rules shall govern the conduct of all meetings of the School Board and its committees and sub-committees.

B. The President of the Board, or in his/her absence, the Vice President of the Board, shall serve as the presiding officer for all School Board meetings. In the absence of both the President and the Vice President, the Superintendent shall serve as the presiding officer until a temporary chairman for that meeting has been elected by a majority vote of those Board members present and voting.

C. After the call to order, invocation, pledge of allegiance, student presentation, roll call, and action on

the minutes of any previous meeting, the presiding officer shall call, in the order listed on the agenda, first the items under unfinished business and then the items under new business, and shall recognize first the Superintendent or the Board member who caused such item to be placed on the agenda. The Superintendent or Board member shall then explain the item and make, or recommend, as the case may be, such motion as he/she shall desire. After such motion receives a second, the presiding officer shall open the floor for community input not to exceed five minutes for any one individual or group or organization. The presiding officer shall, with the approval of the Board, set a time limitation on an agenda item. At the conclusion of the public input, the presiding officer shall recognize any members of the Board, the Superintendent and members of the staff designated by the Superintendent, who wish to be heard on that item, in the order the presiding officer deems advisable.

Each Board member shall be allowed ten (10) minutes to express his/her initial views on any agenda item, motion, substitute motion, or amendment related to each agenda item and five (5) minutes for further comment. No member of the Board or staff shall speak without first being recognized by the presiding officer.

D. After discussion by the members of the Board and the Superintendent has been completed, the presiding officer shall call for the vote upon the pending motion or any amendments or substitute motions which may have been made. During Board discussion of an agenda item, any Board member, at any time, may move the

question on any pending motion, substitute motion, amending motion, etc. and thus conclude further discussion of same, provided there is an affirmative vote of two-thirds of the members present and voting on the motion for the previous question.

E. The presiding officer of any meeting shall conduct such meeting in accordance with these Rules of Procedure and shall have authority to make rulings on interpretation of these Rules of Procedure and any other matter or question which may arise with regard to conducting the meeting, including recognition of speakers, whether a speaker is out of order, etc. The decision of the presiding officer shall be final, unless appealed by a Board member to the entire Board as set forth herein below.

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No.

81-2144

In The Supreme Court of the United States

OCTOBER TERM, 1981

FANNIE GODWIN,

Appellant,

v.

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Appellees.

On Appeal from the Supreme Court of Louisiana

MOTION TO DISMISS OR AFFIRM

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No. 81-2144

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

FANNIE GODWIN,

Appellant,

v.

EAST BATON ROUGE PARISH SCHOOL BOARD,

ET AL.,

Appellees.

MOTION TO DISMISS OR AFFIRM

The Appellee moves the Court to dismiss the appeal herein, or, in the alternative, to affirm the judgment of the Supreme Court of the State of Louisiana on the grounds that it is manifest that the questions on which the decision of the cause depends are

so unsubstantial as not to need further argument.

I.

THE REGULATION INVOLVED AND THE NATURE OF THE CASE

A.

The Regulation

This appeal raises the question of the validity of a certain procedural rule that was adopted by the School Board for the Parish of East Baton Rouge, State of Louisiana. The procedural rule in question, which was designated by the School Board as Rule VII, provides in pertinent part as follows:

> "No sign, placard, or poster, which is carried by hand, shall be permitted in the School Board office building or any of its rooms."

The effective date of this procedural rule was January 5, 1981.

This procedural rule does not prohibit a person from attaching a sign to his person or clothing and entering the School Board office building or any of its rooms. In addition, the rule in question does not base the prohibition against hand-carried signs on the content of the language found in said signs. The prohibition against all hand-carried signs also eliminates the possibility of the presiding officer of the School Board improperly using his discretion to allow some hand-carried signs while not allowing others. All signs carried by hand are forbidden by this rule.

B.

The Proceedings Below

At the first School Board meeting following the effective date of the new set of rules of procedure, which set

included Rule VII, the Appellant, Fannie Godwin, with full knowledge of the existence of Rule VII, intentionally took a hand-carried sign into a School Board meeting. She held the sign above her head during the meeting, at which time the presiding officer of the School Board recessed the meeting and asked her to remove the sign as required by Rule VII. When she refused to remove the sign, the presiding officer asked her to please leave the meeting. When she also refused to obey that request, she was taken from the building by non-uniformed police officers.[1]

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[1]The police officers were not employees of the School Board and were not being paid by the School Board to be present at said meeting. As the State District Court Judge stated, "the issue is not whether or not this person was arrested. ...The question before this Court is whether or not a person has a right to bring a hand-carried sign or placard or poster into the School Board

Shortly thereafter, the appellant filed suit in State District Court, seeking declaratory relief and an injunction against the School Board and its presiding officer prohibiting both from enforcing the portion of Rule VII quoted above. After conducting a hearing on the request for preliminary injunction, the State District Court found that Rule VII was not unconstitutional and ordered that the suit be dismissed at plaintiff's costs.

Appellant then applied to the First Circuit Court of Appeal for the State of Louisiana for supervisory writs and an order prohibiting the School Board from enforcing Rule VII during the pendency of the appeal. That appellate court

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building and its rooms during meetings." References made by Appellant to her arrest are not, therefore, relevant to the issues presented herein.

denied both the application for supervisory writs and the request for a stay order, after which the Appellant appealed the decision of the First Circuit to the Louisiana Supreme Court. That Honorable Court granted the application for supervisory writs and ordered the First Circuit to hear the appeal as expeditiously as possible.

After receiving briefs from both parties, the First Circuit Court of Appeal concluded, on April 8, 1981, that Rule VII was a constitutional exercise of the authority of the School Board and that the trial judge had properly denied the injunctive relief sought by appellant. 403 So.2d 72 (La. App. 1st Cir. 1981). The Appellant then filed an application for writ of review with the Louisiana Supreme Court, which

application was granted by that Court. After receiving briefs and oral arguments from both parties, the Louisiana Supreme Court, on December 14, 1981, affirmed the rulings of the State District Court and State Court of Appeal. 408 So. 2d 1214 (La. 1981).

II.

ARGUMENT

A.

No substantial federal question warranting Supreme Court review is presented by Appellant, since she has failed to show abridgment of her rights of free speech.

Before examining the question of whether the regulation on free speech contained in Rule VII, if any, is necessary and appropriate, a more basic question must be answered. That question

is whether there has been a real abridgment of Appellant's right of free speech. Kovacs v. Cooper, 336 U.S. 77 (1949). As this Court indicated in the case of Gibboney v. Empire Storage and Ice Co., 336 U.S. 490, 502, 93 L.Ed 834, 843, 69 S.Ct. 684,

> "it has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written or printed."

Cf. also Cox v. Louisiana, 379 U.S. 536, 13 L.Ed. 2d 471, 484, 85 S.Ct. 453 (1965).

In this particular case, Rule VII declared a course of conduct (bringing hand-carried signs into School Board meetings) to be improper; it did not attempt to suppress First Amendment freedoms. Appellant has argued that her

sign should be considered "pure speech" and not "conduct" such as picketing. Appellee fails to see the difference, however, between a person holding a sign above her head in a meeting and a person holding a sign above her head on the sidewalk or street outside the building in which the meeting is being held. Both instances would constitute examples of picketing, which is, by Appellant's own admission, conduct and not pure speech.

Since it is clear that Rule VII addresses conduct, and not speech, that procedural rule cannot be said to abridge Appellant's right of free speech. Thus, no substantial federal question is presented for review herein.

A second factor which must be considered in determining whether there

has been a real abridgment of the rights of free speech concerns the availability of alternative means of communication. Pell v. Procunier, 417 U.S. 817, 824, 94 S.Ct. 2800, 41 L.Ed. 2d 495 (1974); Kleindienst v. Mandel, 408 U.S. 753, 765, 33 L.Ed. 2d 683, 92 S.Ct. 2576(1972). The evidence adduced at the trial before the State District Court on a motion for preliminary injunction was uncontradicted that Appellant herein had alternative means of communication available to her, and the Louisiana Supreme Court specifically recognized that fact in its opinion.

The East Baton Rouge Parish School Board has allowed public input at its meetings for several years. Appellant could have communicated the thoughts contained in her sign just as well, if

not better, by orally making that statement to the School Board and to the public.[1] As Appellant admitted at the trial on the hearing for preliminary injunction, she has regularly attended School Board meetings over the last eight (8) years and, with only one or two exceptions, has always been allowed to address the School Board concerning items on the agenda of that School Board meeting. This has been true despite the fact that many of her comments have been critical of the School Board or individual members of said Board.

Appellant has now argued that this alternative means of communication was

[1]Meetings of the School Board are broadcast throughout the Parish and community by local cable television station. Persons who make oral presentations to the Board during meetings are included in those broadcasts, but persons who sit in the audience at such meetings are not usually so included.

not available to her at the School Board meeting in question, despite the fact that she introduced no evidence in support of such contention at the trial on the hearing for preliminary injunction. Indeed, the only testimony elicited on this point came from Mrs. Eileen R. Armstrong, former President of the School Board, who clearly stated that Appellant herein could have communicated orally, at the microphone and before the television camera, the sentiments contained in her sign.

In light of the availability of alternative means of communication[1]

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[1]The Louisiana Supreme Court also mentioned the fact that Rule VII does not prevent Appellant from carrying her sign anywhere outside the School Board office building and its rooms and also does not prevent her from submitting to the School Board a written document setting forth her views on any matters before said Board.

and the fact that Rule VII addressed conduct and not free speech, Appellee would submit that there has been no abridgment of Appellant's right of free speech in this case. For that reason, there is no substantial federal question presented herein, and Appellee would respectfully submit that this Honorable Court should dismiss this appeal, or, in the alternative, affirm the judgment entered in this case by the Louisiana Supreme Court.

B.

The case presents no substantial question not previously decided by this Court.

This Court has long recognized that the right of free speech does not mean "that everyone with opinions or beliefs to express may address a group at any

public place and at any time." Cox v. Louisiana, supra, 13 L.Ed. 2d at 483-484. From this case and other cases has evolved the doctrine of "time, place and manner." This doctrine was stated in the case of Cox v. New Hampshire, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049, as follows:

> "First Amendment rights are not absolute. Reasonable time, place and manner restrictions on the exercise of First Amendment rights have long been recognized."

312 U.S. at 575-576.

Cf. also Grayned v. City of Rockford, 408 U.S. 104, 33 L.Ed. 2d 222, 231, 92 S.Ct. 294 (1972); Heffron v. International Society for Krisna Consciousness, Inc., __ U.S. __, 69 L.Ed. 2d 298, 101 S.Ct. 2559 (1981).

In the Heffron case, this Court thoroughly reviewed the jurisprudence

relative to "time, place and manner" restrictions on First Amendment rights. In Heffron, the Court set forth a three part test for determining whether a restriction on First Amendment rights is permissible:

> (1) The restriction must not be based upon either the content or subject matter of speech to be regulated; and
>
> (2) The restriction must serve a significant governmental interest; and
>
> (3) The restriction must leave open ample alternative channels for communication of the information.

69 L.Ed. 2d at 306.

In its opinion, the Louisiana Supreme Court relied heavily on this Court's opinion in Heffron, and, in fact, the State Supreme Court opinion clearly indicates that the three part test mentioned above was applied to the facts contained in the instant controversy. A simple review by this Court of the opinion of the Louisiana Supreme Court will clearly indicate that the correct constitutional standards were applied to the review of this case and that the decision made by said State Supreme Court, on the basis of those standards, was proper. Since the decision by the Louisiana Supreme Court was based on this recent decision by this Court, Appellee would respectfully submit that this appeal presents no substantial question not previously decided by this Honorable Court.

III.

CONCLUSION

Wherefore, Appellee respectfully submits that this case presents no substantial federal question warranting Supreme Court review, or, in the alternative, that this case presents no substantial question not previously decided by this Court. For that reason, Appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the case by the Supreme Court of the State of Louisiana.

Respectfully submitted,

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I, JOHN F. WARD, JR., the attorney for Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ____ day of July, 1982, I served three copies of the Motion to Dismiss or Affirm on appellant by mailing the same, through the United States mail, to Woodrow W. Wyatt, counsel of record for Fannie Godwin, at 3623 Perkins Road, Suite 6, Baton Rouge, Louisiana 70808. I further certify that all parties required to be served have been served.

JOHN F. WARD, JR.